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*So Done*  
*10-28-20*  
*Ch/K. Heller*

October 26, 2020

In re Novartis and Par Antitrust Litigation, 1:18-cv-04361-AKH

Dear Judge Hellerstein:

Pursuant to Rule 4.A and 4.B.ii of Your Honor's Individual Rules of Practice, Paragraph 19 of the Stipulated Protective Order (the "Protective Order") (ECF No. 95) and applicable law, I write on behalf of Novartis Pharmaceuticals Corporation and Novartis AG (together, "Novartis") requesting permission to file certain documents under seal in connection with Plaintiffs' Rule 37 Motion to Compel Novartis to Designate a 30(b)(6) Witness ("Motion to Compel" or "Mot. to Compel").

Novartis respectfully requests that the Court issue an order sealing certain: (i) portions of Plaintiffs' Memorandum of Law in Support of their Motion to Compel; (ii) Exhibits to the Declaration of Dan Litvin In Support of Plaintiffs' Motion To Compel (the "Litvin Declaration"); (iii) portions of Novartis Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion to Compel (the "Opposition") and (iv) Exhibits to the Declaration of Julie A. North in Opposition to Plaintiffs' Motion to Compel (the "North Declaration"). Novartis has conferred with Plaintiffs and they take no position on whether or not the documents should be sealed.

Under Rule 4.A of Your Honor's Individual Rules of Practice, a party must obtain the Court's authority to file documents under seal, which is appropriate if "closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 144 (2d Cir. 2016) (quoting *In re N.Y. Times Co.*, 828 F.2d 110, 116 (2d Cir.1987)). While there is a "common law presumption in favor of permitting public access to judicial documents," the court must consider the "the privacy interests of those resisting disclosure." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). In particular, "privacy interests of innocent third parties . . . should weigh heavily in a court's balancing equation." *In re Savitt/Adler Litig.*, No. 95-CV-1842 (RSP/DRH), 1997 WL 797511, at \*2 (N.D.N.Y. Dec. 23, 1997). "There is no established presumption of

public access with respect to confidential settlement discussions and documents.” *Travelers Indem. Co. v. Excalibur Reinsurance Corp.*, No. 3:11-CV-1209 CSH, 2013 WL 4012772, at \*5 (D. Conn. Aug. 5, 2013). Rather, “[t]he Second Circuit has recognized the value of confidentiality in settlement negotiations.” *Id.* (approving redactions of exhibits containing confidential settlement discussions); *see also Refco Grp. Ltd., LLC v. Cantor Fitzgerald, L.P.*, No. 13 CIV. 1654 RA HBP, 2015 WL 4298572, at \*5 (S.D.N.Y. July 15, 2015) (finding that the interest in maintaining “confidential information concerning an agreement with a non-party entity [] outweigh[ed] the public interest in access to the judicial documents”).

Further, “notwithstanding the presumption of public access to judicial records, courts may deny access to records that are sources of business information that might harm a litigant’s competitive standing.” *In re Parmalat Sec. Litig.*, 258 F.R.D. 236, 244 (S.D.N.Y. 2009) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598, 98 S. Ct. 1306, 1312, 55 L. Ed. 2d 570 (1978)). For example, when documents “contain highly proprietary material concerning the defendants’ marketing strategies, product development, costs and budgeting, [] the privacy interests of the defendants outweigh the presumption of public access.” *GoSMiLE, Inc. v. Dr. Jonathan Levine, D.M.D. P.C.*, 769 F. Supp. 2d 630, 649–50 (S.D.N.Y. 2011) (finding it appropriate for materials to remain under seal). *See also United States v. Ferguson*, No. CRIM. 3:06CR137CFD, 2008 WL 113654, at \*1 (D. Conn. Jan. 5, 2008) (granting motion to seal confidential business information “because the disclosure of this confidential information would cause undue harm to the businesses involved”).

Exhibit 15 to the Litvin Declaration relates to the terms of the license and settlement agreement between Novartis and third party Teva regarding the product Lotrel. While the existence of the Lotrel settlement agreement was disclosed, *see* Order of Dismissal, ECF No. 192, *Novartis Corp., et. al v. Teva Pharmaceuticals USA, Inc.*, Civ A. No. 04-4473, (D.N.J. July 20, 2011), the terms of the agreement were not and the parties agreed to keep them confidential absent both parties’ consent. Thus, the Exhibit should remain sealed in its entirety.

Exhibits 14, 17 and 18 to the Litvin Declaration reflect the terms of and/or discuss Novartis’s confidential settlement with a third party regarding another Novartis product. As in the Lotrel agreement, Novartis cannot disclose the terms of the agreement, nor can Novartis disclose the existence of the agreement without the third party’s consent. As such these Exhibits should also remain sealed in their entirety.

Exhibit 16 to the Litvin Declaration is a presentation regarding strategic business planning that includes throughout information regarding both of the confidential settlement and license agreements discussed above and other commercially sensitive business information that could harm Novartis’s commercial standing. It includes, for example, information about Novartis’s business plans regarding generic entry for a variety of drugs. The document is thus commercially sensitive and highly proprietary, and should be sealed in its entirety.

In addition, certain sections of Plaintiffs' Motion to Compel, Exhibits 4 and 5 to the Litvin Declaration, Novartis's Opposition, and Exhibits A and F to the North Declaration quote from or relate to the same confidential settlement and license agreements and, for the same reasons, should be sealed in part. Novartis has filed those documents with appropriate redactions.

Novartis is available at the Court's convenience should Your Honor have any questions or wish to discuss these requests.

Very truly yours,

/s/ Julie A. North

Julie A. North

The Honorable Alvin K. Hellerstein  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1050  
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BY ECF